
**LEGAL
REQUIREMENT**

MCL 552.451 - 552.459
MCL 552.603 - 552.603b
MCL 722.1 - 722.6
MCL 722.711 - 722.730
MCL 780.151 - 780.183
45 CFR 302.56
45 CFR 303.4
45 CFR 303.106

FEDERAL

Federal regulations require that states:

- Secure support for children from legally liable persons,
- Formally establish child support obligations using appropriate state laws and legal processes, **and**
- Cooperate with other states in establishing child support obligations. Spousal support obligations cannot be established under the IV-D program.

Regulations also prescribe the timeframes for actions to establish child support obligations. A support obligation must be established or service of process completed within ninety (90) calendar days of locating a non-custodial parent. If service of process is not completed within the ninety (90) day timeframe, unsuccessful attempts to serve process must be documented. When service of process is completed, expedited process standards must be met. Attempts to serve process must be made in accordance with state guidelines.

States must, pursuant to federal and state law, establish and utilize rebuttable guidelines for setting the amount of child support awards. Once established, states must restrict the retroactive modification of obligations.

STATE

The Family Support Act, Status of Minors Act, Paternity Act, the Revised Uniform Reciprocal Enforcement of Support Act (RURESA), and the Uniform Interstate Family Support Act (UIFSA) are the statutes most commonly used to establish support obligations. Divorce laws include provisions which permit intervention by the prosecuting attorney to protect the interest of the child or public.

State support statutes allow support obligations to be established on behalf of children who are minors, or, who are between the ages of 18 and 19 years and 6 months and

- Attend high school on a regular, full-time basis,
- Are expected to graduate, **and**
- Live with the payee of support, **or**

- Live in an institution.

The parties may also agree to establish support obligations beyond age 18.

ESTABLISHING OBLIGATIONS

Establish support obligations for minor children (and those who have reached age 18 as permitted under State law) who are members of IV-D cases.

IV-D regulations do not permit the establishment of spousal support obligations. However, spousal support obligations may be enforced under the IV-D program when there is an associated child support obligation enforced under the program and the child(ren) and (former) spouse for whom support is ordered live together.

Support Specialists evaluate the need for services to establish child support obligations in IV-D cases and initiate referrals to the Prosecuting Attorney. IV-D agencies in other states may also initiate referrals for services.

Evaluate referral information and take necessary action to establish a child support obligation using the most appropriate state statute and legal processes available.

Establish formal obligations even when a non-custodial parent is voluntarily and faithfully making support payments for the children. A court order for support provides a measure of protection for the children and is enforceable by the Friend of the Court.

Prosecuting Attorneys may also be asked to provide assistance in a pending divorce action or in modification of the divorce decree. A Support Specialist may initiate a referral in a case with a pending divorce when a child or support for a child has been omitted from the temporary order. The Prosecuting Attorney should enter an appearance or contact the attorney involved to correct the situation.

A referral requesting divorce modification may be made when support for a child has been omitted from the divorce decree and paternity is not at issue. In such a case, the Prosecuting Attorney may prefer to establish the support obligation through another statute (e.g., Status of Minors) rather than alter the divorce judgment. The Support Specialist will initiate a paternity referral when a divorce decree is silent regarding the status of a child born or conceived during a marriage and paternity is at issue. See Item 230.

Time Standards for Establishment

Make every effort to establish child support orders in IV-D cases within federally mandated timeframes. Those timeframes require that within ninety (90) calendar days of locating the non-custodial parent:

- A support order must be established; **or**
- Service of process necessary to commence proceedings to establish an order must be completed; **or**
- Unsuccessful attempts to serve process necessary to commence proceedings must be documented.

OCS policy requires Support Specialists to initiate referrals for order establishment within seven (7) calendar days of determining the location of a non-custodial parent or of obtaining an acknowledgment of parentage, whichever is later. **Exception:** Policy requires paternity referrals within twenty (20) days of location if the Support Specialist attempted to obtain an acknowledgment of parentage.

The ninety (90) day timeframe for service of process or order establishment includes (i.e., is decreased by) the referral timeframe when the Support Specialist locates the non-custodial parent or obtains an acknowledgment of paternity. The referral will specify the date of location.

Attempts to serve process must be made in accordance with state guidelines for service of process as described in Item 220. Efforts to serve process must be made after a summons is issued until service is completed or it is determined that location information is inadequate to permit service. When service cannot be completed due to inadequate location information, activities to relocate the non-custodial parent must be initiated and completed within the timeframes specified Item 210. When a non-custodial parent is relocated, the timeframe for service begins with the date of relocation.

When service of process is completed, federal standards for expedited processes apply. Those standards require that action to establish an obligation from the time service of process occurs to disposition must be completed in six (6) months in at least 75% of cases and twelve (12) months in at least 90% of cases.

Time standards for establishing support obligations apply to intrastate actions and to interstate actions when Michigan is the responding state. When Michigan initiates an interstate referral, regulations require that the case be referred to the responding state's interstate central registry within twenty (20) calendar days of determining that the non-custodial parent is in another state. Refer to policy later in this series for information concerning actions in interstate cases.

Agency as Complainant

Support action initiated by the client is usually preferred. However, FIA may act as the complainant when the client is a public assistance recipient. The Paternity Act allows FIA to act as complainant when the client is a Medicaid recipient. It may be necessary for FIA to take action on

behalf of the client and children when the client refuses to cooperate with support actions or to prevent unnecessary antagonism between the non-custodial parent and the client or to protect the interests of the Agency. Support Specialists are authorized to sign child support complaints as FIA representatives.

PARENTING TIME AND CUSTODY ISSUES

Parenting time and custody disputes present no legal bar to pursuing support nor can an assistance client be found noncooperative for failure to agree on parenting time and custody arrangements. Therefore, the Prosecuting Attorney may not decline to take support action in a IV-D case because of parenting time or custody disputes.

Unless there are compelling reasons for denying parenting time or agreeing on custody arrangements, encourage the client to reach an agreement with the non-custodial parent. The situation can often be resolved through a discussion with the parties regarding the issues and legal ramifications involved. The parties may also be advised of available domestic relations mediation through the Friend of the Court.

Order Amounts and Provisions

Use of Formula

State support statutes require that Prosecuting Attorneys recommend support awards and that courts order support in amounts determined using the State's child support formula. This includes support orders established to reimburse a state for public assistance paid.

The court may deviate from the formulas in cases in which the court determines that the amount of support determined using the formulas is unjust or inappropriate. Facts about and reasons for a deviation from the formula must be set forth in writing or on the record.

Use of the formula provides a means of assuring that families and obligors receive equitable treatment. For that reason and in accordance with state law, it is expected that support awards recommended by Prosecuting Attorneys in IV-D cases will be calculated using the state's child support formula. In an exceptional case, however, a Prosecuting Attorney may determine that use of the formula would be inappropriate or unjust. In those cases, ensure that the court is aware of the deviation, the facts upon which the recommendation is based, and the reason for the alternative recommendation.

The State's child support formula is published as the "Michigan Child Support Formula Manual." That manual is available from:

Department of Management and Budget
Publication Section

P.O. Box 30026
Lansing, MI 48909

The cost of the publication is \$5.00.

Age of Child

A support order that is recommended on behalf of a minor child in a IV-D case is to include provisions for current support of the child until the child's 18th birthday. Additionally, the recommended order should include provisions which would require payment of current support for a child beyond the age of 18 if the child meets statutorily prescribed requirements for school attendance and living arrangements. If a child in the IV-D case has reached the age of 18 when an order is being established, the recommended order must include provisions for current support of the child if he/she is:

- Under the age of 19 years and 6 months,
- Attending high school full-time,
- Expected to graduate, **and**
- Living with the custodian of the IV-D case.

Income Withholding Health Insurance Reporting

Consistent with state laws, support orders recommended in IV-D cases are to include provisions for income withholding and health insurance obligations. The Support and Parenting Time Enforcement Act requires that each support order entered or modified by the circuit court provide for an order of income withholding. Under substantive support laws, courts are required to order parents to obtain or maintain health care coverage available as a benefit of employment or to a self-employed parent at a reasonable cost. See Item 250 for additional information on health insurance obligations.

Further, support statutes require that support orders define parties responsibilities to report income and available health care coverage. Accordingly, recommended orders must include provisions that require each party to keep the Office of the Friend of the Court informed of:

- The name and address of his or her current source of income (source of income is defined in the Support and Parenting Time Enforcement Act); **and**
- Any health care coverage that is available as a benefit of employment or is maintained by the party; the name of the insurance company, health care organization, or health maintenance organization; the policy, certificate and/or contract number; and the names and birth dates of the persons for whose benefit the coverage is maintained.

Retroactive Modification

The state is required to have statutorily based procedures that restrict retroactive modification of child support obligations. Accordingly, the fol-

lowing statement is to be included in support orders as provided by MCL 552.603:

"Except as otherwise provided in section 3 of the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being section 552.603 of the Michigan Compiled Laws, a support order that is part of a judgment or is an order in a domestic relations matter as that term is defined in section 31 of the Friend of the Court Act, Act No. 294 of the Public Acts of 1982, being section 552.531 of the Michigan Compiled Laws, is a judgment on and after the date each support payment is due, with the full force, effect, and attributes of a judgment of this state, and is not, on and after the date it is due, subject to retroactive modification..."

**Retroactive
Correction**

Section 3b of the Support and Parenting Time Enforcement Act (552.603b) allows retroactive correction of the amount of support if either party knowingly failed to report or misrepresented his or her income.

Stipulations

Stipulated orders for support, when determined in accordance with the state's child support formula, are encouraged as a method of establishing obligations. Orders established by stipulation require less court time to effect than those requiring a judicial determination and generally avoid adverse relationships between parties.

While attempts to obtain a stipulated order may occur prior to the filing of a compliant, prosecuting attorneys must ensure that federal standards for completing service of process can be met if a stipulation is not obtained. Action to obtain a stipulated order may also occur concurrently with action to file a complaint and obtain service of process.

In cases involving military personnel, stipulations may be useful especially when the service member has an overseas assignment. A service member may be willing to stipulate to support when the member has already established a voluntary allotment. Letters of explanation and stipulation documents may be sent to the commanding officer of the affected service member.

Dismissals

When a petition or complaint for support is dismissed without prejudice, evaluate the reason for the dismissal. Whenever possible, the Prosecuting Attorney should continue action to secure a support order. For example, if dismissal occurs for failure to serve prior to expiration of the summons but the location of the non-custodial parent is known, support action must continue.